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Docket No.: 8697.001.00
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

Stephen J. DAVID

Application No.: 09/446,951

Group Art Unit: 3627

Filed: February 28, 2000

Examiner: M. Cuff

For: STEP APPARATUS

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
Washington, DC 20231

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Dear Sir:

In response to the restriction requirement set forth in the Office Action mailed September 9, 2002, Applicant hereby provisionally elects (Species IV) **with traverse**, for continued examination. Claims 1, 6-13, 29-30, 32, 36-38 appear to fall within Species IV (e.g., ball hitch with a step), accordingly, examination of these claims are requested.

The Examiner has required restriction between:

- Species I: No claims, figures 1, 2, and 4 drawn to a step apparatus in lieu of a hitch.
- Species II: Claims 6-13, figure 3 drawn to a step apparatus built upon a ball hitch.
- Species III: Claims 1, 36, 37, and 38, figure 5 drawn to pintle hook hitch with a step assembly.
- Species IV: Claims 1, 29, 30, 32, 36 and 37, figure 6 drawn to a ball hitch with a step assembly.


- Species V: Claim 3, not shown, drawn to a mounting portion including a body member adapted to engage a tubular socket.
- Species VI: Claim 14-28, not shown, drawn to a mounting portion adapted to be secured to a vehicle by bolting up between a towing hitch and bolt-up type hitch mounting.
- Species VII: Claim 31, not shown, drawn to a step wherein the step portion is selectively secured.

The Examiner states, “[t]he shown steps have only the feature of a step in common which is not considered a ‘special technical feature’ in defining a ‘step apparatus’.” However, contrary to the Examiner assertions, Applicants respectfully submit there is unity of invention. The Examiner appears to use the standard of a lack of unity for a species restriction. Tellingly there exists a technical relationship, among the claims, which the Examiner dismisses with a conclusory statement. Additionally, there is at the very least a *prima facie* case of unity of invention (i.e., a special technical feature) as the related International Application Published under the Patent Cooperation Treaty (PCT) (WO 99/01303) was not restricted.

The Examiner states there are no generic claims, however, he uses the same the independent claims in different species of the restriction requirement. This at the very least identifies those claims as generic, therefore, if one of the generic claims become allowable Applicants request consideration of the claims to additional species under 37 CFR 1.141. Accordingly, Applicants respectfully traverse the restriction requirement and request reconsideration.

Dated: October 9, 2002

Respectfully submitted,

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